

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.474 of 2014

(Smt. Shashikala w/o Bahurao Gharat and another
vs.
Prabhakar Tukaram Girade and others)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Shri S.A. Marathe, Advocate for the appellants.
Shri S.A. Chaudhari, Advocate for the respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : 22nd APRIL, 2016.

Heard.

The appellants are the original plaintiffs who had initially filed suit for possession of 18 ares of land along the north-south and west portion of Survey No.94, which was parallel to their field. The suit was filed on 31/07/1991 claiming that the cause of action arose in June, 1991 when the defendants started obstructing the plaintiffs from using the suit way. During pendency of the suit, the plaint was sought to be amended and a prayer for declaration that the plaintiffs had easementary right over the aforesaid portion of land was sought to be added. The order allowing the amendment of plaint was challenged and in Writ Petition No.793/2003, the question of limitation for claiming said relief was kept open. The trial Court after framing the issue of

limitation held that the relief of declaration as regards easementary right was barred by limitation inasmuch as the cause of action for seeking the same had arisen in the year 1991 itself. This finding has been confirmed by the appellate Court.

Shri S.A. Marathe, the learned Counsel for the appellants submitted that as the initial pleadings claiming right to use the way in question were already present in the plaint, there was no question of the suit being barred by limitation. He submitted that the prayer for possession was already made when the suit was filed and as the amendment was allowed, same could be treated as an aid to the pleadings which were already on record. It was, therefore, submitted that both the courts erred in holding that the relief was barred by limitation.

Shri S.A. Chaudhari, the learned Counsel for the respondents supported the impugned judgment.

It is not in dispute that the suit for possession was filed on 31/07/1991 which related to the same suit way in respect of which easementary right was being claimed by amending the plaint in the year 2003. The issue of limitation having been kept open, the amendment though allowed, would not relate back to the date of filing of the suit. It is to

be noted that before the trial Court, the plaintiffs did not press prayer for possession of 18 ares of land which was the suit way. The only prayer that was pressed was with regard to the relief of declaration of easementary rights. As such, the prayer was made in the year 2003, while pleadings indicated that the cause of action had arisen in the year 1991. It is, therefore, clear that this relief was barred by limitation. Both the Courts have referred to the provisions of Article 58 of the Limitation Act, 1963 while considering said aspect.

In view of aforesaid, the second appeal does not give rise to any substantial question of law. The same is, therefore, dismissed. No costs.

JUDGE

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